



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

CIRCULAR

UMTA C 4716.1A

July 26, 1988

Subject: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS FOR
RECIPIENTS AND TRANSIT VEHICLE MANUFACTURERS

1. PURPOSE. The purpose of this circular is to assist applicants and recipients of Urban Mass Transportation Administration (UMTA) assistance and transit vehicle manufacturers (TMVs) in implementing the U.S. Department of Transportation (DOT) regulations for disadvantaged business enterprises (DBEs), formerly minority business enterprises (MBEs).

This circular provides information on the requirements created under the DOT regulation and delineates the steps recipients, subrecipients, contractors, and subcontractors should take to carry out these requirements in UMTA-assisted contracts, procurements and in leasing.

2. CANCELLATION. This circular cancels UMTA Circular 4716.1, "Urban Mass Transportation Administration Disadvantaged Business Enterprise/Women Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers," dated 1-15-85.
3. REFERENCES.
 - a. Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272;
 - b. Program Fraud Civil Remedies Act of 1986, Public Law 99-509;
 - c. False Claims Amendments Act of 1986, Public Law 99-562;
 - d. Section 105(f) of the Surface Transportation Assistance Act of 1982, Public Law 97-424;
 - e. Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100-17;
 - f. OMB Circular A-102 (Revised), "Grants and Cooperative Agreements with State and Local Governments," dated 3-11-88, (Note: Effective 10-1-88, DOT regulations, 49 CFR Part 18, will replace OMB Circular A-102);
 - g. OMB Circular A-128, "Audits of State and Local Governments," dated 4-12-85;
 - h. 13 CFR Part 121, "Small Business Size Standards; Modification of Size Standards to make Existing Size Standards Compatible with 1987 Standard Industrial Classification System," dated 5-25-88;
 - i. 49 CFR Part 23, as amended, "Participation by Minority Business Enterprises in Department of Transportation Programs";

- j. 49 CFR Part 29, "Suspension and Debarment of Participants in DOT Financial Assistance Program";
 - k. Part II, Section 110(a) of the UMTA Standard Grant Contract, dated 8-15-85; and
 - l. UMTA Order 4220.1B, "Third Party Contracting Guidelines," dated 5-5-88.
4. IMPACT ON DELEGATIONS OF AUTHORITY. This circular does not impact the UMTA delegations of authority.
5. SCOPE. This circular applies to the following sections of the Urban Mass Transportation (UMT) Act of 1964, as amended:
- a. Section 3 (discretionary capital grants);
 - b. Section 8 (discretionary planning assistance grants);
 - c. Section 9 (formula assistance grants);
 - d. Section 16(b)(2) (elderly and handicapped grants);
 - e. Section 18 (non-urban formula assistance grants); and
 - f. Transit projects funded with Federal Aid Urban Systems grants, (Title 23, U.S.C. Chapter 1).
6. BACKGROUND.
- a. It is the DOT policy to encourage and increase participation of small and disadvantaged businesses in the contracts and programs funded by the Department.
 - b. The DOT initial regulation, 49 CFR Part 23, dated March 31, 1980, required UMTA recipients exceeding specified funding thresholds to develop written MBE programs, including goals for the utilization of MBEs (including women-owned firms). On July 3, 1980, the Department issued guidance relative to the implementation of 49 CFR Part 23. This regulation was amended on April 27, 1981, requiring bidders/contractors to make a "good faith effort" in developing and implementing their MBE programs and achieving their MBE goals. This regulation was again amended on July 21, 1983, by adding a new Subpart D implementing Section 105(f) of the Surface Transportation Assistance Act (STAA) of 1982. The STAA of 1982 required that except to the extent that the Secretary determined otherwise, not less than 10 percent of the amounts authorized to be appropriated under the Act were to be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

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- c. On April 2, 1987, the Congress enacted into law the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987. This statute included a provision extending the requirement for DOT to provide contracting opportunities for DBEs. Section 106(c) of the STURAA requires that not less than 10 percent of the amounts authorized to be appropriated under Titles I and III of the STURAA or obligated under Titles I, II, and III (other than Section 203) of the STAA of 1982 shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.
- d. This circular does not impose requirements upon UMTA applicants, recipients, and TVMs beyond those mandated by 49 CFR Part 23, but is designed to assist those applicants, recipients, and TVMs in meeting requirements of the regulations. It should be used in conjunction with 49 CFR Part 23 and other directives and issuances referred to in this circular.
- e. Guidance and instructions in this circular must be used in conjunction with other DOT and UMTA issuances as noted in parenthetical and other references. (Unless otherwise indicated, such parenthetical references refer to 49 CFR Part 23.) Further guidance in implementing 49 CFR Part 23 is available through the UMTA Regional Offices or the UMTA Headquarters Office of Civil Rights, as appropriate.
- f. As the title indicates, the circular is designed to assist UMTA grant recipients and TVMs in implementing 49 CFR Part 23. Chapter I is primarily for grant recipients and Chapter II is for TVMs and/or distributors of transit vehicles. Chapter III applies to recipients and TVMs.

7. DEFINITIONS.

- a. "Affirmative Action" means positive activities undertaken to eliminate discrimination and effects of past discrimination and to ensure nondiscriminatory practices in the future.
- b. "Challenge" means a formal filing by a third party to rebut the presumption that a particular individual is socially and economically disadvantaged.
- c. "Commercially Useful Function" means work performed by a DBE firm in a particular transaction that, in light of industry practices and other relevant considerations, has a necessary and useful role in the transaction, i.e., the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in the recipient's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

- d. "Contracting Opportunity" means any decision by a recipient or contractor to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).
- e. "Disadvantaged Business Enterprise (DBE)" means a small business concern:
- (1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- f. "Goal" means a numerically expressed objective which recipients or contractors are required to make good faith efforts to achieve.
- g. "Manufacturer" means an individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the recipient, contractor, or TVM.
- h. "Primary Recipient" means a grantee who receives DOT financial assistance and passes all or some of the assistance on to a subrecipient.
- i. "Recipient" means any entity that receives Federal financial assistance from UMTA. The term "Recipient" includes a grantee or any subgrantee to which Federal funds have been passed through by a grantee. Within the context of this circular, the term "Recipient" also refers to a "direct applicant."
- j. "Regular Dealer" means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this definition.
- k. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:
- (1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
- (5) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh;
- (6) "Women," regardless of race, ethnicity, or origin; and
- (7) "Other," individuals found to be socially and economically disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

Recipients shall make a rebuttable presumption that individuals in the above groups are socially and economically disadvantaged. Recipients also may determine, on a case-by-case basis, other individuals who are socially and economically disadvantaged.

- i. "Subrecipient" means any entity that receives Federal financial assistance from UMTA through a primary recipient.
- m. "Transit Vehicle" is a vehicle used by an UMTA recipient, e.g., bus, railcar, or van, for the primary program purpose of public mass transportation; this definition does not include locomotives or ferry boats.
- n. "Transportation Improvement Program (TIP)" means an annual or biennial listing of capital and operating assistance projects proposed for funding by UMTA.
- o. "Transit Vehicle Manufacturer (TVM)" is a manufacturer of vehicles used by UMTA recipients for the primary program purpose of public mass transportation (e.g., buses, railcars, vans). The term does not apply to firms which rehabilitate old vehicles or to manufacturers of locomotives or ferry boats. The term also refers to distributors of or dealers in transit vehicles with respect to requirements of Section 23.67 of the regulations.
- p. "Unified Planning Work Program (UPWP)" means a listing of planning projects proposed for funding by UMTA.


Alfred A. DelliBovi
Administrator

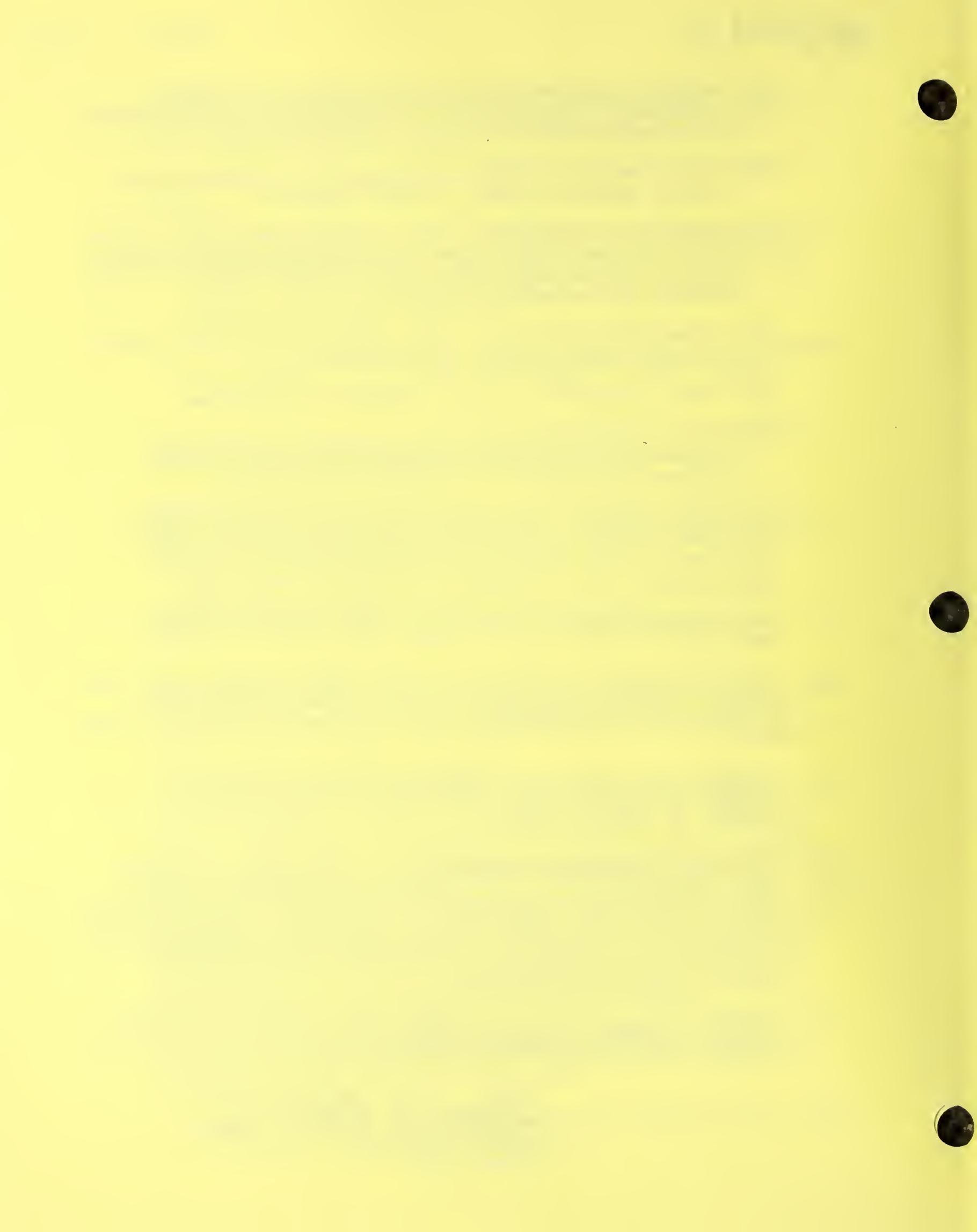


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ATTACHMENTS

- 1 Sample Format - UMTA Funding Base, Projected Awards for Fiscal Year
- 2 Sample Format - Calculation of Annual Goals for Fiscal Year
- 3 Sample Format - Past Results in Contracting with DBEs
- 4 Sample Format - Report of DBE Awards and Commitments
- 5 Sample Format - TVM Certification of Compliance with Subpart D,
49 CFR Part 23
- 6 Sample Methodology - Transit Vehicle Manufacturer
- 7 Sample Format - Transit Vehicle Manufacturer's DBE Report

CHAPTER I

PROGRAM REQUIREMENTS RELATING TO APPLICANTS AND RECIPIENTS

1. REQUIREMENTS (23.43).

- a. All applicants and recipients must agree to abide by the statements in paragraphs (1) and (2) below. These statements must be included in the recipient's UMTA-assistance agreement and in all subsequent agreements between the recipient and any subrecipient, and in all UMTA-assisted contracts between recipients or subrecipients and any contractor.
 - (1) "Policy. It is the policy of DOT that DBEs as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement."
 - (2) "DBE Obligation. The recipient or its contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."
- b. As a minimum, "necessary and reasonable steps" for recipients include:
 - (1) Identification of all contracting opportunities, if any, associated with the UMTA assistance. The overall project budget might serve as the source document for this step.
 - (2) Analysis of DBE availability (known and projected) to provide the products or services identified for contracting at either the prime or subcontract levels.
 - (3) Establishment of contract goals for all UMTA-assisted contracts based upon the availability analysis. This step includes making contact with organizations which may be expected to have information regarding availability including as a minimum, the SBA and the U.S. Department of Commerce, Minority Business Development Agency.

- (4) Use of good faith efforts to achieve the contract goals established. Good faith efforts criteria are described in 49 CFR Part 23, Appendix A. (See also paragraphs 7.b(5) and (6) of this chapter.)
- (5) Use of DBE firms certified under 49 CFR Part 23.
- (6) Recordkeeping and reporting sufficient for verification of steps taken and participation achieved. (Contractors shall also maintain such records by which to document expenditures with DBE firms and records of all DBE substitutions made, as applicable.)

2. THRESHOLDS (23.41).

- a. Recipients and subrecipients who will let UMTA-assisted contracts and meet the threshold requirements described in paragraphs (d) and (e) below shall implement a DBE program. This program must be submitted to the appropriate DOT modal administration with or before any application for financial assistance.
- b. The term "appropriate DOT modal administration" means the Federal Aviation Administration for airport agencies; Federal Highway Administration for State DOT and State highway agencies; Federal Railroad Administration for railroads; and UMTA for mass transportation agencies and Metropolitan Planning Organizations (MPOs).
- c. Subrecipients who receive UMTA funds in excess of the threshold amounts submit their program either to the primary recipient or to UMTA for approval in accordance with the guidelines set out in paragraph 10(d) of this chapter.
- d. Applicants for UMTA capital and/or operating assistance in excess of \$250,000 in a given Federal fiscal year, exclusive of funds for transit vehicle purchases, under Sections 3, 9, 16(b)(2), and 18, and Federal Aid Urban Systems, or planning assistance in excess of \$100,000 under Sections 8, 9, and 18 are required to prepare written DBE programs containing elements (5) through (8) and (11) in Figure I-1, page I-4.
- e. Applicants for UMTA capital and/or operating assistance in excess of \$500,000 in a given Federal fiscal year, exclusive of funds for transit vehicle purchases, under Sections 3, 9, 16(b)(2), and 18, Federal Aid Urban Systems, or planning assistance in excess of \$200,000 under Sections 8, 9, and 18 are required to prepare written DBE programs containing all elements in Figure I-1, page I-4.

3. CALCULATIONS OF THRESHOLD (23.41; 23.43).

- a. Under 49 CFR Part 23, UMTA assistance is classified as either capital/operating or planning/technical assistance.
- b. Assistance under Sections 3, 16(b) (2), and Federal Aid Urban Systems programs is counted towards the capital/operating threshold.
- c. Assistance under Section 8 is counted as planning assistance.
- d. Assistance under Sections 9 and 18 are counted toward either threshold depending on how the funds are programmed (i.e., as capital/operating activities or as planning/technical activities).
- e. Recipients should total funds attributable to each classification (i.e., capital/operating or planning/technical assistance) to determine if funding under any classification meets the threshold.
- f. Funds counted under one classification are not to be counted under another.
- g. If the sum of the recipient's funding does not exceed the threshold for any classification the requirement to prepare a DBE program does not apply. The recipient is required, however, to comply with the general requirements under Section 23.43 of the regulation. (See Chapter I, Section 1 of this circular.)

4. ELEMENTS OF DBE PROGRAMS. The program elements which are required for each DBE program, submitted in accordance with the funding threshold specified above, are listed in Figure I-1; required program elements are identified by the symbol "X." Additional recommended program elements are listed in Figure I-2, page I-5.

Figure I-1

REQUIRED PROGRAM ELEMENTS

	\$250,000 \$100,000	\$500,000 \$200,000
1. A policy statement expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible (23.45(a)).		X
2. Designation of a liaison officer and support staff as may be necessary to administer the program, and a description of the authority, responsibility, and duties of the liaison officer and support staff (23.45(b)).		X
3. Procedures to ensure that DBEs have an equitable opportunity to compete for contracts and subcontracts (23.45(c)).		X
4. Opportunities for use of banks that are DBEs (23.45(d)).		X
5. DBE Directory (23.45(e)). Recipients are to conduct an annual survey and to compile a listing of small business concerns and their locations (including women-owned firms).	X	X
6. Procedures to ascertain the eligibility of DBEs (23.45(f); Appendices B and C).	X	X
7. Percentage goals for the dollar value of products and/or services to be awarded to DBEs, including the methodology for developing contract goals for DBEs (23.45(g); Subpart D).	X	X
8. Procedures to require that contractors/suppliers satisfy the contract's requirements on meeting the DBE goal (23.45(h)).	X	X
9. Description of the methods by which the recipient will require subrecipients, contractors, subcontractors, and suppliers to comply with applicable DBE requirements. (Include bid solicitation documents and contract language (23.45(j)).)		X
10. Procedures by which the potential recipient will achieve DBE set-asides where permissible under local law (23.45(k)).		X
11. Challenge procedures (Subpart D).	X	X

Figure I-2

RECOMMENDED PROGRAM ELEMENTS

1. Definitions of Terms in Program (23.5; 23.62).
 2. General Requirements (DBE Obligations and Lessee Goals) (23.43).
 3. Counting DBE Participation Toward Meeting Goals (23.47).
 4. Maintenance of Records and Reports (23.49).
-
5. UPDATING DBE PROGRAMS. DBE programs, or amendments to previously approved programs, are submitted to the UMTA Area Civil Rights Officer or other appropriate DOT modal administration, for approval as soon as possible. (See paragraph 2.b. of this chapter.) UMTA will reassess its approval of each DBE program annually (23.41(d)(2)).

Recipient's DBE programs must be revised to incorporate changes required by the final rule, dated October 21, 1987, to implement Section 106(c). These programs shall be provided to UMTA in conjunction with the submission of the recipient's Fiscal Year 1988 DBE goals or within 60 days of issuance of this circular, whichever is later. The primary changes in the regulation are as follows:

- a. Section 23.62 is amended by adding, in the definition of "socially and economically disadvantaged individuals," immediately following the words "(or lawfully admitted permanent residents) and who are" the word "women"; and by adding, in the definition entitled "(b) 'Hispanic Americans'," immediately after the words "or other Spanish" the words "or Portuguese";
- b. Submission of Annual DBE Goal - 23.45(g), 23.64, 23.65, and 23.66;
- c. DBE Directory requiring the conduct of an annual survey and compilation of a listing of small business concerns and their locations, including women-owned firms;
- d. Sixty percent rule;
- e. Revised SBA Size Standards;
- f. Recipients are required to take specific minimum steps in the process of certifying firms; and
- g. DBE firms must be graduated from the DBE program if their average annual gross receipts over 3 years exceed \$14 million.

6. GOAL REQUIREMENTS (23.43, 23.45(g), and 23.64). To comply with the congressional mandate under Section 106(c) of the STURAA of 1987, that "...not less than 10 percent of the amounts authorized to be appropriated under Titles I and III of the STURAA or obligated under Titles I, II, and III (other than Section 203) of the STAA of 1982, shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals..., recipients who meet the threshold requirements are expected to set an annual goal of at least 10 percent for the utilization of DBEs."

Once submitted by the recipient and approved by UMTA, the annual DBE goal becomes part of all financial assistance agreements. In effect, the annual goal becomes a performance standard for measuring progress toward the achievement of an anticipated level of DBE participation, and a partial means of assessing compliance with the Department's DBE regulation.

Recipients with leasing opportunities are required to establish an overall DBE goal for vendors and other businesses who will be located in UMTA-assisted facilities. This goal is to be submitted to the appropriate UMTA Area Civil Rights Officer for approval.

a. Setting the DBE Goal.

(1) Types of Goals.

- (a) Overall Goal. A DBE contracting goal shall be set for a recipient's total projects. In lieu of or in addition to the annual goal, and if authorized by the UMTA Administrator upon request, a goal for a particular grant, project, or group of grants and/or projects (project specific goals) may be set.

- 1 Annual Goal. An annual goal for the utilization of DBEs is set on the basis of all UMTA-assisted contracts (including purchase orders), exclusive of funds for transit vehicle purchases, during a 1-year period (usually the Federal fiscal year). This goal must be reviewed and updated annually.
- 2 Project Specific Goal. A project specific goal for the utilization of DBEs is set on the basis of all funds to be expended under a specific UMTA grant, project, or group of grants and/or projects in UMTA-assisted contracts, exclusive of funds expended for transit vehicles. A project specific goal, once approved, remains in force for the duration of the project or until an amended goal is approved by UMTA.

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(b) Other Goals.

- 1 Contract Specific Goals. A contract specific goal for DBEs must be set on each contract where there are subcontracting opportunities or where a set-aside procedure is being used. A contract specific goal is not set for transit vehicle purchases. A contract specific goal need not be submitted to UMTA for approval. However, this goal should be made available to authorized representatives of UMTA upon request, and approval by UMTA may be required prior to contract solicitation.
- 2 Leasing Goals. A DBE goal must be set on the total anticipated opportunities for lessees in UMTA-assisted facilities. This goal is to be updated as required, but not less than triennially.

- (2) Methodology for Setting the DBE Goal. Recipients are required to develop a methodology for determining the annual, project specific, contract specific, and leasing goals. A description of the goal setting methodology must be submitted to UMTA with the recipient's DBE program.

The methodology is a formalized process undertaken by the recipient to estimate potential DBE participation in future UMTA-assisted contracts and leases. The methodology is in part based upon projected contracting and leasing opportunities, availability of eligible DBEs, and past contracting and leasing results. Although a specific methodology is not referenced under the Department's regulation, the methodology should at a minimum include an assessment of the following:

- (a) The number, type, and dollar value of contracting and leasing opportunities expected to be financed or made available with UMTA assistance and to be awarded in the period;
- (b) The number of DBEs available, based on the type of opportunity, to compete for such contracts and leases (known and projected);
- (c) The past results of the recipient's efforts to contract/ lease with DBEs during the previous year, and the reasons for the high or low level of those results;
- (d) Methods used by the recipient to increase DBE participation in DOT-assisted contracts and leases;

- (e) The geographical area in which the recipient will solicit bids or proposals from contractors, subcontractors, suppliers, or lessees generally; and
- (f) Percentage of minority and female population in the recipient's service area or jurisdiction.

b. Development of an Overall DBE Goal.

- (1) Total Dollar Value of DBE Contracts. The DBE goal is calculated on the basis of the estimated total dollar value of contracts to be awarded to DBEs for services and/or goods.
- (2) Base. The goal is based on the total estimated amount of UMTA funds for contracting opportunities (exclusive of funds for purchasing transit vehicles, salaries for a recipient's own work force, overhead, and other non-contractable items) to be expended in the forthcoming Federal fiscal year, or for the duration of a specific grant, project, or group of projects. The recipient, in calculating its DBE goal, must include only UMTA funds.

Applicants are reminded that contracting opportunities refer to activities expected to be undertaken by the recipient to obtain a product or service through a purchase order, contract, or other procurement instrument.

In calculating the overall goal, the recipient's base includes all funds in grants not yet awarded by UMTA and grants awarded by UMTA in previous fiscal years that are anticipated to be awarded in contracting opportunities in the forthcoming fiscal year. See Attachment 1, "UMTA Funding Base, Projected Awards for Fiscal Year," and Attachment 2, "Calculation of Annual Goals for Fiscal Year," for sample formats you may wish to consider for calculating goals. (See also paragraph 9b of this chapter.)

- (3) Past Results. The overall goal is also based on past results of the recipient's efforts to obtain contracts with DBEs. Therefore, recipients are to provide UMTA with the information identified in Attachment 3, "Past Results in Contracting with DBEs."

c. Publication, Submission, Review, and Approval of Goal.

- (1) Publication and Submission of Overall Goal. At the time of submitting its overall goal to the Department, the recipient must publish a notice announcing the proposed overall DBE goal and a description of how this goal was developed. This goal submission will be made to the Area Civil Rights Officer.
 - (a) Submission of the **annual goal** is required 60 days before the beginning of the Federal fiscal year, which begins October 1, for continuing recipients of UMTA funds. New applicants must submit the goal and the DBE program with their initial application.
 - (b) Submission of a **project specific goal** is required at the time the grant application is submitted to UMTA. The recipient must have permission from the UMTA Administrator to proceed on this basis. Requests for permission to set a project goal should include a statement supporting the recipient's decision to set a project specific goal in lieu of, or in addition to an overall program goal. Such requests should generally be submitted in conjunction with the submission of the annual goal.
 - (c) Recipients submitting a DBE goal of 10 percent or more are required to submit supporting documentation on the methodology and analyses employed (paragraph 6a(2) of this chapter) and the Federal funding base (paragraph 6b(2) of this chapter) (Section 23.45(g)). If the DBE goal is less than the previous year's DBE goal, the recipient must include an explanation of the change in circumstances that makes the lower goal reasonable.
 - (d) Recipients submitting a DBE goal of less than 10 percent must, in addition to the documentation required above, submit a justification for the lower goal as prescribed by Section 23.65 and Appendix D of the July 21, 1983 regulation. (See also paragraph 6d(2) of this chapter.)

The request for approval of a DBE goal of less than 10 percent must be signed by, or have the written concurrence of, the Governor (in the case of a State agency) or Mayor or other locally elected official(s) responsible for the operation of the mass transit or planning agency (in the case of a local agency), and forwarded to the Area Civil Rights Officer.

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Recipients intending to request approval of a DBE goal of less than 10 percent must consult with minority and women's organizations, general contractors' associations, community organizations, and others having knowledge of the availability of DBEs. A summary of the consultations, including comments received, is to be forwarded to the Area Civil Rights Officer as part of the justification package.

- (e) A leasing goal is to be submitted with the DBE program, and a new leasing goal will be submitted upon expiration of any previous leasing goal.
- (2) Criteria for Review and Approval. In all cases, an annual goal will be approved only after UMTA has determined that the recipient is making a "good faith effort" to maximize the participation of DBEs in UMTA-assisted contracts and leases.
- (a) A DBE contracting goal of 10 percent or more will be evaluated in terms of the adequacy of the recipient's methodology for setting its goal, and the efforts of the recipient to locate eligible DBEs and to increase their participation in DOT-assisted contracts.
 - (b) A DBE contracting goal of less than 10 percent will, in addition to the above, be evaluated in terms of the adequacy of the recipient's justification for a lower goal.

Approval of a DBE goal of less than 10 percent will be made only after it is determined by the Administrator or his/her designee that the recipient is making all appropriate efforts to increase DBE participation to a 10 percent level and that, despite the recipient's efforts, the recipient's goal is a reasonable expectation for DBE participation given the availability of DBEs. (See Section 23.45(h) and paragraphs 7b(5) and (6) of this chapter for "good faith efforts" criteria.)

- (3) Approval of Overall Goal.
- (a) The Director, Office of Civil Rights, or his/her designee, reviews for approval a DBE goal of 10 percent or greater.
 - (b) When a request is made for a DBE goal of less than 10 percent, the goal will be reviewed for approval by the Director, Office of Civil Rights.
 - (c) The UMTA approval or disapproval of a recipient's DBE goal will be made within 30 days of UMTA's receipt of the goal and all of the required supporting documentation. Recipients will be notified in writing of UMTA's decision and/or any recommended action.

- (d) In cases where a DBE goal is not approved by the Director, Office of Civil Rights, or his/her designee, UMTA will consult with the recipient and establish an adjusted DBE goal. At the request of a recipient, UMTA may reexamine its decision on the basis of additional information provided by the recipient.
 - (e) The Director, Office of Civil Rights, or his/her designee, may also conditionally approve a goal (e.g., contingent on agreement of the recipient to increase efforts in a particular area of its plan).
- d. Exemptions, Deviations, and Requests for a DBE Goal of Less than 10 Percent (23.41, 23.65, 23.66; and Appendix D of the DOT Regulation).
- (1) Requests for Exemptions or Deviations. The Department's regulation permits UMTA to consider written requests for deviations or exemptions from portions of the regulation. UMTA considers these requests on a case-by-case basis upon receipt of a written request and justification for the deviation or exemption. UMTA will not:
 - (a) Grant a total exemption from its DBE regulation, since such a request is inconsistent with the Department's requirement that a reasonable effort be made by recipients to increase the participation of DBEs in DOT-assisted contracts and procurements;
 - (b) Approve a recipient's request for an exemption from the requirement to develop and implement a DBE program containing the required elements;
 - (c) Approve an exemption from the public notification requirement, since participation by members of the general public and members of the DBE community is considered integral to a demonstration of reasonable efforts.
 - (2) Requests for a DBE Goal of Less than 10 Percent. A separate procedure has been created for considering a request for an annual goal of less than 10 percent. The procedure requires the recipient to submit a special justification for the proposed goal, in addition to a description of its annual overall goal, goal methodology, and analysis of the Federal funding base. The justification shall contain the following elements:
 - (a) A description of the recipient's efforts to locate disadvantaged businesses;
 - (b) A description of the recipient's efforts to make DBEs aware of contracting opportunities and make such opportunities available to DBEs;

- (c) A description of the recipient's initiatives to encourage and develop DBEs;
 - (d) A list/summary of the legal barriers impeding the participation of DBEs in DOT-assisted contracts and a description of the efforts the recipient has made to overcome or mitigate the effects of these barriers;
 - (e) An assessment of the availability of DBEs to compete for and perform on the recipient's DOT-assisted contracts;
 - (f) A description of the size and other pertinent characteristics of the minority and female population and an assessment of the relevance of these factors to the availability or potential availability of DBEs to participate in DOT-assisted contracts and procurements; and
 - (g) A summary of the assessment of the recipient's information on the availability of DBEs and the recipient's efforts to increase DBE participation by contacting minority, women's and general contractors' associations, community organizations, and other persons or organizations which could be expected to have information on the availability of DBEs and the adequacy of the recipient's efforts.
- e. Elected Official Concurrence (23.64). The request for approval of an annual goal of less than 10 percent must be signed by, or have the written concurrence of, the Governor (in the case of a State agency) or Mayor or other locally elected official(s) responsible for the operation of the mass transit or planning agency (in the case of a local agency).

7. CONTRACTING REQUIREMENTS. It is UMTA policy to encourage maximum participation of DBEs in UMTA-assisted programs. Recipients participating in these programs must demonstrate that they are taking affirmative action to provide opportunities for DBEs to compete for and perform under UMTA-assisted contracts. The applicable procedural requirements are summarized in this section.

a. Office of Management and Budget (OMB) A-102 (Revised) Requirements. Attachment O of OMB Circular A-102 (Revised) and UMTA Circular 4220.1B require that prime contractors (if subcontracts are to be let), recipients, and subrecipients take affirmative steps to utilize DBEs. The steps include:

- (1) Including DBEs on contract solicitation lists;
- (2) Assuring that potential DBEs are solicited whenever they are a potential source;

- (3) Dividing contract elements into smaller tasks or quantities to permit maximum DBE participation;
 - (4) Setting delivery schedules that encourage DBE participation;
and
 - (5) Using services and assistance provided by the SBA and other agencies in locating available DBEs and encouraging the development of such businesses.
- b. DOT Requirements (49 CFR Part 23). Recipients, subrecipients, contractors, and suppliers are required to follow the DOT regulation under 49 CFR Part 23.
- (1) Contract Goal (23.45(g)).
 - (a) Recipients and subrecipients are required to set a goal for each prime contract (excluding those for purchase of transit vehicles) with subcontracting possibilities.
 - (b) The goal is based on the known availability of DBEs, and should be consistent with the recipient's overall DBE program or project goal.
 - (2) Solicitation of Bids/Proposals (23.45(g)).
 - (a) Recipients, subrecipients, and contractors are expected, at a minimum, to seek DBEs in the same geographical area in which they usually seek contractors, subcontractors, and suppliers.
 - (b) Contractors and suppliers that cannot meet their contract goal using DBEs from this geographical area are expected to expand their search to a reasonably wider geographical area.
 - (3) Certification (23.47, 23.51, 23.53; and Schedules A and B of the DOT Regulation). DBEs counted toward a contract goal must be certified and must be performing a commercially useful function.
 - (4) Contract Award Procedures (23.45(h), 23.45(i); and Appendix A of the DOT Regulation).
 - (a) Bidders/proposers are expected to meet or exceed the stated contract goal or demonstrate that, despite its good faith efforts, they could not meet the contract goal (unless UMTA has approved an alternate method such as conclusive presumption).

- (b) Prior to the execution of the contract/supply agreement, the successful bidders or proposers must submit:
- 1 The names of DBE subcontractors/suppliers participating in the contract;
 - 2 A description of the work each is to perform or products provided; and
 - 3 The dollar value of each proposed DBE subcontract.
- (c) Contractors' demonstration of good faith efforts is required in all cases where the contractors fail to meet the stated contract goal for DBEs.
- (5) Good Faith Efforts (Appendix A). Appendix A to the regulation provides the following guidance to recipients in regard to "good faith efforts" by bidders/proposers who failed to meet the DBE goal, previously referred to as MBE, to determine if they are eligible for contract award:
- "Efforts that are merely pro forma are not good faith efforts to meet the goals. Efforts to obtain MBE participation are not good faith efforts to meet the goals, even if they are sincerely motivated if, given all relevant circumstances, they could not reasonably be expected to produce a level of MBE participation sufficient to meet the goals."
- (6) Good Faith Efforts Criteria (23.45(h), 23.45(i); and Appendix A of the DOT Regulation). A recipient's criteria for determining whether or not a good faith effort was made may include, but are not limited to, the following:
- (a) Whether the contractor/supplier attended any pre-solicitation or pre-bid meetings held by the recipient to inform DBEs of contracting opportunities;
 - (b) Whether the contractor/supplier advertised contracting opportunities in general circulation, trade, and minority and female focused media;
 - (c) Whether the contractor/supplier provided written notice to a reasonable number of specific DBEs in sufficient time to allow them to participate;
 - (d) Whether the contractor/supplier followed up with DBE firms interested in participating;
 - (e) Whether the contractor/supplier selected portions of work to be done by DBEs (including dividing contracts into economically feasible units to facilitate participation);

- (f) Whether the contractor/supplier provided adequate information about plans, specifications, and/or contracting requirements;
 - (g) Whether the contractor/supplier negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons;
 - (h) Whether the contractor/supplier made efforts to provide assistance to obtain bonding, lines of credit, or insurance; and
 - (i) Whether the contractor/supplier effectively used the services of available minority and female organizations, contractors' groups, State and local offices, etc., that have knowledge of available DBE firms or the names of organizations to locate such firms.
- (7) Good Faith Efforts (Invitation for Bid/Request for Proposal). Good faith efforts, under the Invitation for Bid (IFB) method of procurement, to be considered must have been carried out prior to bid opening. Under a Request for Proposal (RFP) or similar method, good faith efforts must have been accomplished prior to receipt of best and final offers.
- (8) Alternate Selection Method (23.45(h), 23.45(i)). A recipient may prescribe other requirements of equal or greater effectiveness in lieu of good faith efforts. For example, the recipient may make a conclusive presumption that, if any bidder/proposer meets the DBE goal, then other bidders/proposers could have met the goal. This method is outlined in Section 23.45(i) of the March 31, 1980 regulation. Pursuant to the amendment of Section 23.45(i), as reflected in Section 23.45(h) of the April 27, 1981 regulation, the conclusive presumption method of selection is now **optional, not mandatory**.
- (9) Liquidated Damages. Failure to achieve DBE contract goals does measurable damage to UMTA and recipient efforts to maximize participation of DBEs in UMTA-assisted contracts. Therefore, UMTA supports the use of liquidated damages clauses to recover damages which could result from contractor failure to meet established DBE goal. For purposes of establishing liquidated damages in each contract, damage calculations should consider the potential loss of all or part of the UMTA grant, the dollar value of anticipated DBE profits to be earned, the cost of development, implementation, and administration of the recipient's DBE program and other estimated costs.

Example - A recipient calculates and administers its liquidated damage provisions as follows: If the contractor failed to achieve the minimum goal established in the contract at the time of the award of the contract or later modified, the contract payments are reduced as a liquidated damage and not as a penalty by an amount equal to the mathematical dollar difference between the total contract amount multiplied by the DBE percentage goal and the actual dollar amount of documented DBE participation in the contract. However, any authorized adjustment in the percentage of DBE participation approved by the engineer and DBE coordinator/liaison officer may be substituted in this formula for the DBE percentage goal as originally established.

(10) Set-Asides (23.45(k)).

- (a) Where not prohibited by State and local law, a recipient may, but is not required to, use set-asides where the recipient determines that the use of set-asides is needed to achieve its DBE goal; and
- (b) A minimum of three DBE firms with capabilities consistent with contract requirements, must be available to bid for set-aside contracts to permit adequate competition.

8. ELIGIBILITY AND CERTIFICATION (Appendix C of the DOT Regulation).

a. Eligibility Standards.

- (1) To determine whether an enterprise is a small and disadvantaged business, both of the following criteria must be met:
 - (a) The enterprise must qualify as a small business concern; and
 - (b) The enterprise must be 51 percent owned and controlled by socially and economically disadvantaged individuals.
- (2) If the business has a valid certification as a socially and economically disadvantaged business by the SBA 8(a) certification, there is an irrebuttable presumption of eligibility for certification.
- (3) Small business size standards vary by type of industry. Recipients and subrecipients should refer to 13 CFR Part 121 for current standards. In addition to the individual industry size standards, DBE firms will be considered ineligible and will be graduated from the DBE program if their average annual gross receipts from all sources, including affiliates, over the previous 3 years exceed \$14 million. Grantees are encouraged to pay particular attention to size standard criteria and note that SBA size standards operate in addition to the \$14 million threshold noted above.

(4) Presumption or Determination of Social and Economic Disadvantaged.

(a) There is a rebuttable presumption that all women, Black Americans, Hispanic Americans (to include Portuguese Americans), Native Americans, Asian-Pacific Americans, and Asian-Indian Americans are socially and economically disadvantaged individuals.

1 Recipients are not required to make a separate determination that an individual in one of the presumptive groups is socially and economically disadvantaged prior to certification. Since this presumption is rebuttable, a recipient could determine that a member of one of these groups was in fact not socially and economically disadvantaged on the basis of evidence refuting eligibility.

2 Recipients are required to establish a challenge procedure for considering evidence provided by a third party refuting the presumption of social and economic disadvantaged.

(b) On a case-by-case basis, other groups (e.g., handicapped veterans, Appalachian white males, Hasidic Jews, or any other group or other individuals), may be found to be socially and economically disadvantaged.

(5) Elements of Social Disadvantage.

(a) Social disadvantage must be attributable to an individual's color, national origin, gender, physical handicap, long term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control;

(b) The individual must demonstrate that he or she has suffered social disadvantage;

(c) Social disadvantage must be rooted in treatment that the individual has experienced in American society;

(d) Social disadvantage must be chronic, longstanding, and substantial, not fleeting and insignificant; and

(e) Social disadvantage must have negatively affected the individual's entry into, and advancement in, the business world.

(6) Evidence of Social Disadvantage.

- (a) A personal statement from the individual, statements from third parties, administrative or judicial findings of discrimination, and other pertinent factors or circumstances, in support of the individual case can be used as evidence of social disadvantage; and
- (b) When reviewing the evidence, the recipient should carefully assess the individual's education, employment experience, and business history for instances of discrimination, denial, and social patterns which have discouraged the individual.

(7) Economic Disadvantage.

- (a) Recipients determine social disadvantage before considering a claim of economic disadvantage;
- (b) If a recipient determines that a business is not socially disadvantaged, it is not necessary to make a determination of economic disadvantage; and
- (c) The test for determining economic disadvantage is the degree of disadvantage compared to business owners who are not socially disadvantaged individuals. Recipients are expected to make a basic judgment on whether a business and its socially disadvantaged owner(s) is in a more difficult economic situation than most businesses and owners that are not socially disadvantaged.

(8) Other Eligibility Considerations. A determination of social and economic disadvantage standing alone does not mean that a firm is eligible. The recipient must also determine that the firm is 51 percent owned and controlled by the socially and economically disadvantaged individual(s).

b. Certification (Schedules A and B of the DOT Regulation and 23.53).

- (1) All businesses wishing to participate in UMTA-assisted contracts as DBEs must be certified by the recipient;
- (2) Recipients are required to have a certification process for determining eligibility on the basis of the eligibility standards provided in the Department's regulation. Under these standards, the recipient determines whether the business is 51 percent owned and controlled by socially and economically disadvantaged individuals;

- (3) A business desiring to participate as a DBE in UMTA-assisted contracts initiates the certification process by submitting an application for certification to the recipient;
- (4) The DOT regulation provides two schedules (applications) to be completed by businesses/individuals wishing to participate as DBEs in UMTA-assisted contracts. These schedules are to be used by recipients in the certification process unless UMTA approves an alternative certification process for use by the recipient. In such cases, DBEs are to submit the information required under the recipient's alternative certification process;
- (5) Recipients are required to implement specific minimum steps in the process of certifying firms. These steps shall include, but not be limited to, personal interviews, onsite visits, review of licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, type of work preferred, etc;
- (6) Reciprocity among recipients with regard to certification is not required under the regulation;
- (7) Recipients are required to accept 8(a) certifications by the SBA;
- (8) If a recipient approves a request for certification, the recipient is to formally notify the business/individual that it has been certified. The duration of the certification should be identified in the letter; and
- (9) If a recipient denies a request for certification, the recipient must inform the business/individual of the grounds for the denial in sufficient detail to permit an understanding of the evaluation criteria applied and the facts in the record evidencing the applicant's ineligibility.

c. Challenge to Presumption of Social and Economic Disadvantage.

- (1) Each recipient required to submit a DBE program is required to establish a process for considering challenges to the presumption of social and economic disadvantage of an owner of a business that is certified or that seeks certification as a DBE;
- (2) A challenge refers to a situation in which a third party presents evidence refuting the presumption of social and economic disadvantage of the challenged party;

- (3) During a recipient's review of a challenge submitted by a third party, the presumption of social and economic disadvantage remains in effect;
- (4) A final determination by the recipient may be appealed to the Department by the adversely affected party in accordance with the appeal procedures of Section 23.55 (see paragraph 8d);
- (5) Recipients are required to accept and evaluate written challenges to the social and economic status of businesses certified or seeking certification as DBEs, except in cases where the business has a current 8(a) certification from the SBA;
- (6) The challenging party is required to submit information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged;
- (7) The recipient is required to determine, based on the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged:
 - (a) If the recipient determines that there is no reason to believe the challenged party is not a socially and economically disadvantaged business/individual, the recipient will inform the challenging party of its decision in writing. This terminates the proceeding; and
 - (b) If the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient is required to continue its evaluation as described in (8) through (10) below.
- (8) The recipient shall formally notify the challenged party that its status as a socially and economically disadvantaged individual/business has been challenged. The notification must:
 - (a) Identify the challenging party;
 - (b) Summarize the grounds for the challenge; and
 - (c) Request that information in rebuttal to the challenge be submitted by the challenged party within a reasonable time.

- (9) The recipient shall evaluate the information submitted by the challenged party in response to the challenge and make a proposed determination of the social and economic status of the challenged party. The recipient shall provide both parties with written notification of the proposed determination and the rationale for the determination. The recipient also shall provide an opportunity to the parties for an informal hearing at which they may respond to the proposed determination; and
- (10) The recipient shall make a final determination and provide written notification to both parties. This notification should advise the challenged party of the appeal procedures provided under the regulation.

d. Certification Appeals (23.55).

- (1) A business/individual that believes that it has been wrongly denied certification on the basis of a determination under the recipient's certification process may file an appeal with the Department;
- (2) An adversely affected party to a proceeding under Section 23.69, challenging the presumption of social and economic disadvantage of an owner of a business that is certified or that seeks certification, may file an appeal under the procedures of Section 23.55 (see Section 23.69(c)); and
- (3) During the appeal process, the recipient's determination that the business/individual is or is not a DBE remains in effect unless otherwise advised by the Department.
 - (a) The appeal must be filed not later than 180 days after a final determination has been made by a recipient;
 - (b) Following submission of an appeal, the Department will conduct an investigation pursuant to the Department's Title VI investigation procedures; and
 - (c) The Secretary will make one of the following determinations:
 - 1 The DBE or joint venture is certified;
 - 2 The DBE or joint venture is not eligible to be certified or to participate as a DBE in DOT-assisted contracts and procurements until a new application for certification is formally approved by the recipient;
or

- 3 The challenged party in a proceeding under Section 23.69 is or is not socially and economically disadvantaged.

9. RECORDKEEPING AND REPORTING (23.47, 23.49).

- a. Recordkeeping. The regulation requires the recipient to maintain various types of records on its DBE program and contracting activities. The recipient is required to make these records available to authorized officials of the Department or other Federal agencies for site reviews, compliance reviews, or program audits. Specifically, each recipient should maintain records showing:
- (1) Procedures adopted by the recipient to comply with the Department's regulation;
 - (2) The DOT-assisted contracts (including subcontracts) awarded to DBEs, by type of contract, the names and addresses of the participating DBEs (by ethnic group and sex), the amount of each contract, and an accounting of the actual amount of expenditures for each contract. The recipient is responsible for obtaining reports from prime contractors and suppliers on their progress in meeting contractual DBE obligations. These records should be updated as frequently as necessary to comply with the UMTA reporting requirements; and
 - (3) Efforts made by the recipient to locate and make available contracting opportunities to DBEs and demonstrate a "good faith effort" to maximize the participation of DBEs in UMTA-assisted contracts.
- b. Counting DBE Participation.
- (1) Base for Counting. DBE participation that is counted toward the recipient's annual, project specific, or contract goal should be based on the total amount of DOT-assistance in contracts awarded to eligible DBE participants.
 - (2) Counting Contract Awards Versus Expenditures. For purposes of quarterly and annual reports on DBE participation (progress toward goals), the dollar value of contract and subcontract awards is to be used.
 - (3) Counting Standards.
 - (a) A recipient or contractor may count toward its DBE goal only awards/expenditures to DBEs that perform a commercially useful function in the work of a contract. This means that a DBE must be responsible for a distinct element of the work by actually performing, managing, and supervising the work involved.

A DBE may, of course, enter into subcontracts whose value may be counted toward its DBE goal. Where, however, a DBE subcontracts a significantly greater portion of the work than is usual according to industry practices, this firm is presumed not to be performing a commercially useful function and neither the value of the DBE contract for lower tier subcontracts may be counted. The DBE may present evidence to the recipient to rebut this presumption.

- (b) A recipient should count awards/expenditures on contracts with DBE suppliers of materials and supplies on the following basis:
- 1 Sixty percent of the dollar value of the award/expenditure may be counted toward the goal if the DBE supplier is not a manufacturer.
 - 2 One hundred percent of the dollar value of the award/expenditure may be counted toward the goal if the DBE supplier is a manufacturer (produces materials from raw materials, or substantially alters materials before resale).
 - 3 UMTA permits a recipient or contractor to count toward its DBE goal 100 percent of the cost of materials or supplies it obtains for use in an UMTA-assisted contract, if the materials or supplies are obtained from a DBE "regular dealer."

If the recipient determines that the firm is performing a commercially useful function, the recipient must then decide this function. If the firm is a regular dealer performing the function of a supplier, then the 100 percent credit would apply. On the other hand, if the commercially useful function being performed is that of delivery of products, obtaining bonding or insurance, procurement of personnel, facilities, or materials, etc., only the dollar value of the service performed by the DBE is credited. There are no *per se* rules for determining what, if any, commercially useful function is being performed in a given situation. Recipients must make these judgments on a case-by-case basis.

A recipient or contractor may count toward its DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers:

- a The fees charged for providing a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- b The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies.
- c The fees charged for providing any bonds or insurance specifically required for the performance of the contract.

Example 1. Concerns the use of services that helps the recipient or contractor obtain needed supplies, personnel, materials, or equipment to perform a contract or program function. Only the fee received by the service provider could be counted toward goals. For example, use of a minority sales representative or distributor for a steel company, if performing a commercially useful function, would entitle the recipient or contractor receiving the steel to count only the fee paid to the representative or distributor toward its goal. No portion of the price of the steel would count toward the goal. This would also govern the counting of fees for professional and other services obtained expressly and solely to perform work relating to a specific contract or program function.

Example 2. Concerns transportation or delivery services. If a DBE trucking company picks up a product from a manufacturer or regular dealer and delivers the product to the recipient or contractor, the commercially useful function it is performing is not that of a supplier, but simply that of a transporter of goods. Unless the trucking company is itself the manufacturer of or a regular dealer in the product, credit cannot be given for the cost of the product. Rather, credit would be allowed for the cost of the transportation service.

Example 3. Applies the same principle to bonding and insurance matters. Contractors often are required to obtain bonding and insurance concerning their work in DOT-assisted contracts. When they obtain a bond or an insurance policy from a DBE agent, the amount allowable toward goals is not the face value of the policy or bond or the total premium, but rather the fee received by the agent for selling the bond or insurance policy.

UMTA is aware that this guidance does not explicitly mention every kind of business involved with UMTA financial assistance programs. In administering this guidance, the recipient would, on a case-by-case basis, determine the appropriate provision to apply in a particular situation. For example, a recipient may work with a DBE travel agency to arrange business trips for the recipient's employees. The travel agency receives, in effect, a commission on the price of the airline tickets or other services purchased through the travel agency. To the extent that Federal funds are involved in the travel costs, DBE credit would be available as provided in Example 3, which appears to be the closest analogy to the situation of travel agencies.

4 Awards/expenditures in contracts with businesses that are joint ventures should be counted on the basis of percentage ownership of the eligible DBE in the joint venture. Where DBE ownership is 51 percent or greater, 100 percent of the dollar value is counted.

- c. Reports. Reporting requirements are delineated in Section 23.49 of the DOT regulation. The progress reports are assessments of a recipient's progress toward projected DBE contract awards and the overall DBE goal (see Attachment 4, "Report of DBE Awards and Commitments," regarding use of this OMB form and instructions for completion). This form is to be submitted directly to the Headquarters Office of Civil Rights.
- d. Sections 16 and 18 Reporting Requirements. The reporting requirements in the Sections 16 and 18 programs have been changed. The change reduces the frequency of reporting by State agencies from quarterly to semiannual. Under the new reporting requirements, the State agency will provide semiannual reports to UMTA on its DBE contracting activities and those of its Sections 16 and 18 subrecipients that meet or exceed the threshold requiring UMTA program approval (see paragraph 2 of this chapter). Contracting activities of those Sections 16 and 18 subrecipients below this threshold must be reported annually.

- e. Areas Under 200,000 Population. The reporting requirements for recipients in areas under 200,000, other than those included in paragraph 9d are also changed. Recipients in such areas must provide semiannual reports to UMTA on their DBE contracting activities that meet or exceed the thresholds requiring UMTA approval. Contracting activities of recipients below this threshold must be reported annually.

10. RECIPIENT'S RELATIONSHIP WITH SUBRECIPIENTS/CONTRACTORS, AND SUBCONTRACTORS (23.43).

- a. All agreements between the recipients and subrecipients, and all UMTA-assisted contracts between recipients or subrecipients and contractors, must include the "Policy" and "DBE Obligation" statements set out in paragraphs 1a(1) and (2) of this chapter.
- b. The recipient must advise each subrecipient, contractor, or subcontractor that failure to carry out the above requirements constitutes a breach of contract.
- c. In addition to the subrecipient's obligation under this clause in its contract with the recipient, under some circumstances the subrecipient has a direct obligation to meet the requirements of Section 23.45. Examples of such circumstances include:
 - (1) If the subrecipient is also a recipient of Federal Aid Highway funds; and
 - (2) If the subrecipient receives UMTA funds in excess of \$250,000, exclusive of funds for transit vehicle purchases, whether the subrecipient receives these funds under its contract or agreement with the recipient, or under a direct agreement with UMTA, or from a combination of sources.
- d. Where the subrecipient receives UMTA funds in excess of the threshold amounts from a primary recipient, the required DBE plan is submitted to the primary recipient. Otherwise, the plan is submitted directly to UMTA or the appropriate modal administration. (See paragraph 2 of this chapter.)
- e. The primary recipient may elect to limit the base for computation of its overall goal to its direct contracting opportunities and contracting opportunities of only those subrecipients who receive in excess of the \$100,000 planning and \$250,000 capital/operating fund thresholds.

Accordingly, contracting opportunities with subrecipients who receive less than the threshold amounts need not be included in the primary recipient's base.

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- f. Primary recipients who elect not to include contracting opportunities of small recipients in the primary recipient's goal, as described above, must provide a mechanism for enforcement of the subrecipients' obligations under Section 23.43(a)(2), and for tracking and reporting actual DBE participation levels achieved. Likewise, the subrecipient must have a mechanism in place for carrying out their Section 23.43(a)(2) obligations and for tracking and reporting actual DBE participation levels achieved. (See paragraphs 1a and b of this chapter.)
- g. Contractors shall also maintain such records by which to document subcontracting awards and expenditures with DBE firms in compliance with contract goals. Records regarding all DBE substitutions shall also be maintained by contractors.

11. AUDITS OF DBE EXPENDITURES.

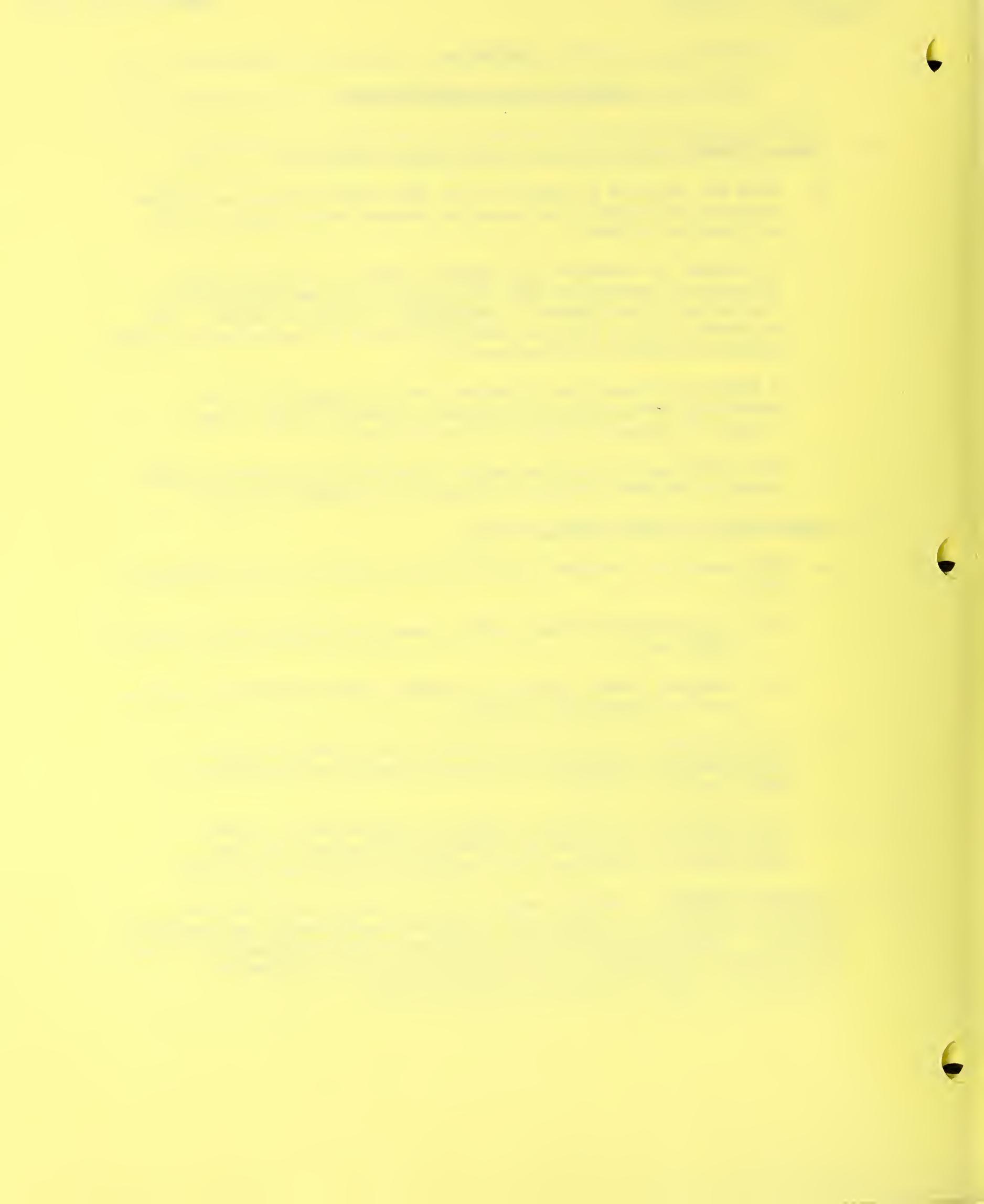
- a. OMB Circular A-128, "Audit of State and Local Governments," states that a single audit replaces all financial audits called for under OMB Circular A-102, Attachment P. (Note: Effective 10-1-88, DOT regulations, 49 CFR Part 18, will replace OMB Circular A-102.) Any additional program audit, e.g., of the DBE program, must be funded separately and made or contracted for by the recipient itself. Reviews of DBE programs, that go beyond the single financial and compliance audits carried out under the single audit act, are an eligible project expense which may be funded by UMTA under a separate budget item in the grant contract.
- b. An audit of DBE contract expenditures (as opposed to contract awards) must be conducted in conjunction with the recipient's required audit under OMB Circular A-128.
- c. The items to be reported or tested in this audit should include:
 - (1) An accounting of all UMTA-funded DBE contract expenditures, exclusive of expenditures that are funded from sources other than UMTA;
 - (2) Contract expenditures separated according to the cost/ expenditure categories (e.g., construction, professional services);
 - (3) Contract expenditures reported by DBEs as a percentage of total contract expenditures;
 - (4) Whether actual DBE contract expenditures are consistent with the contract award data reported by the recipient;
 - (5) Accuracy and completeness of the recipient's records of DBE contract awards and expenditures;

- (6) Verification with DBEs of the reported contract expenditures;
- (7) Verification of the eligibility of participating DBEs; and
- (8) Assessment of compliance with contract requirements under 49 CFR Part 23.

CHAPTER II

TRANSIT VEHICLE MANUFACTURERS

1. ANNUAL OVERALL GOAL (23.45(g), 23.64, 23.66, and 23.67).
 - a. TVMs are required to submit to the UMTA Administrator, or his/her designee for approval an annual percentage overall goal for the utilization of DBEs.
 - b. A TVM goal is submitted and approved using the same procedure followed by recipients under 23.45(g), 23.64, and 23.66 of the regulation. (See Chapter I, paragraph 6 of this circular.) (A suggested form to show the methodology used in developing the overall goal can be found in Attachment 6.)
 - c. A DBE goal of less than 10 percent must be supported by the additional documentation identified in Section 23.65. (See Chapter I, paragraph 6d(2) of this circular.)
 - d. Work performed outside the United States or by the TVM's own work force is excluded from the base used to calculate the goal.
2. SOLICITATION OF BIDS/PROPOSALS (23.67).
 - a. The regulation provides that the TVM will certify to the recipient that:
 - (1) It has submitted the required annual percentage overall goal to UMTA; and
 - (2) UMTA has either approved its annual percentage overall goal or has not disapproved the goal.
 - b. A distributor or dealer must provide a certification of the manufacturer's compliance for those vehicles the distributor or dealer seeks to offer.
 - c. The recipient is required to include a provision in its bid specifications requiring the above certification from TVMs, distributors, or dealers, as a condition of permission to bid.
3. QUARTERLY REPORTS. Quarterly reports of contracting with DBEs are required from TVMs to assess their progress toward meeting the projected DBE goal. These reports are to be submitted to the Headquarters Office of Civil Rights in accordance with Section 23.49 of the regulation. (Attachment 7 shows a suggested reporting form.)



CHAPTER III

COMPLIANCE AND ENFORCEMENT

1. COMPLAINTS (23.73). The regulation provides in Section 23.73 that any person who believes himself or herself, another person, or any specific class of individuals to be subjected to a violation of the regulation may file a complaint in writing with the DOT. Investigations of such complaints are conducted by the DOT pursuant to Title VI (Civil Rights Act of 1964) investigation procedures (49 CFR Part 21). The respondent to the complaint is required to cooperate fully in the investigation.
2. DISADVANTAGED BUSINESS ENTERPRISES (23.68). In the event of noncompliance, UMTA will engage in conciliation efforts and enforcement proceedings as described in Subpart E of the DOT regulation.
3. ADDITIONAL ENFORCEMENT REMEDIES.
 - a. The False Claims Amendments Act of 1986, prohibits the submission of false claims, the submission of false statements in support of a claim, or a conspiracy to defraud the Government regarding a claim. The Act allows the Government to recover double the damages sustained by reason of the Act or course of conduct and to recover a \$2,000 forfeiture for each violation.
 - b. The Program Fraud Civil Remedies Act of 1986, authorizes agencies to seek, through administrative adjudication, double damages and civil penalties for small-dollar frauds, which would not be economical for the U.S. Department of Justice to litigate or for the district courts to decide. Under the Act, the Government may recover "not more than twice" the amount of a false claim or portion of such claim which is false, and a civil penalty of not more than \$5,000 for each separate claim.
 - c. The DOT regulation, 49 CFR Part 29, "Suspension and Debarment of Participants in DOT Financial Assistance Programs" (Section 23.87), provides that any individual, corporation, or other business entity may be denied the opportunity to participate in programs receiving DOT financial assistance, including contracts awarded pursuant to grants, because of serious misconduct or improper use of Federal financial assistance funds. Due process rights are afforded when the necessity arises for the Department to take administrative action to suspend or debar an individual or company from participation in DOT-assisted programs.
 - d. The "Consolidated Omnibus Budget Reconciliation Act of 1985" amends Section 16 of the Small Business Act. This amendment establishes penalties of not more than a \$50,000 fine or imprisonment of not more than 5 years, or both, for misrepresenting, in writing, the status of any concern or person as a small business concern or small business concern owned and controlled by socially and economically disadvantaged individuals.

Possible violations of the above Federal laws and regulations will be referred to the Department's Office of the Inspector General or the Department of Justice for investigation and further judicial or administrative action, as appropriate.

SAMPLE FORMAT

UMTA FUNDING BASE
PROJECTED AWARDS FOR FISCAL YEAR _____

(_____) - (_____)
(Months Covered)

1. Name of Applicant/Recipient: _____
 2. Address: _____
 3. City/State/Zip: _____

4. Contract/ Procurement Opportunities Category	5. Total UMTA Capital Funds	6. Total UMTA Operating Funds	7. Total UMTA Planning Funds	8. Total Other UMTA Funds	9. UMTA Funds With Contracting Opportunities
10. Non-Contracting Opportunities					
11. Construction					
12. Professional					
13. Materials/ Supplies/ Equipment					
14. Other					
15. TOTAL					

16. Name of Preparer: _____ Telephone No. (_____)
 17. Certified By: _____ Date: _____

UMTA FUNDING BASE

INSTRUCTIONS

1. thru 9. Self-explanatory.
10. Non-Contracting Opportunities. This would include such items as overhead, self-insurance, taxes, land acquisition, and force account work. Funds for purchase of transit vehicles (buses and rail vehicles, etc.) should also be included in this category.
11. Construction. Includes, e.g., new construction, rehabilitation, modernization of physical facilities, demolition, paving, fencing, excavation, grading, plumbing, painting, electrical work, plastering, carpentry, roofing and sheet metal work, structural and rebar steel erection, and glazing.
12. Professional Services. Includes, e.g., architecture, engineering, land surveying, accounting, auditing, medical, janitorial, legal services, marketing, and transit management.
13. Materials, Supplies, Equipment. Includes, e.g., fuel, stationery, paper, pencils, typewriters, word processors, computers, bus washers, coin counting machines, fare boxes, lathes, machinery (this does not include transit revenue vehicles).
14. Other. Includes any category of contracting and procurement which is not identified elsewhere, e.g., purchase of bus/van service, vehicle maintenance, etc.
15. Total. Self-explanatory.
16. Name of Preparer. Individual who prepared form.
17. Certified By. Signature of recipient's financial officer or other authorized official (if different from 16 above).

ATTACHMENT 2

SAMPLE FORMAT

CALCULATION OF ANNUAL GOALS FOR FISCAL YEAR _____

(_____) - (_____)
(Months Covered)

1. Name of Applicant/Recipient: _____
2. Address: _____
3. City/State/Zip: _____

4. Contract/ Procurement Opportunities Category	5. UMTA Funds With Contracting Opportunities	6. UMTA Adjusted Dollars		7. Total UMTA Dollars	8. Percentage
		Credit	DBE		
9. Construction		100%			
10. Professional Services		100%			
11. Materials/ Supplies/ Equipment		100%			
		60%			
12. Other		100%			
13. TOTAL					

14. Annual Overall DBE Goal - Total Column (7) divided by Total Column (5) x 100% = _____

15. Certified By: _____ Date: _____

CALCULATION OF ANNUAL GOALS

INSTRUCTIONS

1. thru 6. Self-explanatory.
7. Total UMTA Dollars - DBE. Dollar figures in this column are the sum of figures in 7 by category.
8. Percentage - DBE. This figure is calculated by dividing the figure in column 7 by the figure in column 5 and multiplying by 100%.
9. Construction. Includes, e.g., new construction, rehabilitation, modernization of physical facilities, demolition, paving, fencing, excavation, grading, plumbing, painting, electrical work, plastering, carpentering, roofing and sheet metal work, structural and rebar steel erection, and glazing.
10. Professional Services. Includes, e.g., architecture, engineering, land surveying, accounting, auditing, medical, janitorial, legal services, marketing, and transit management.
11. Materials, Supplies, Equipment. Includes, e.g., fuel, stationery, paper, pencils, typewriters, word processors, computers, bus washers, coin counting machines, fare boxes, lathes, machinery (this does not include transit revenue vehicles since these are reported to UMTA by TVMs).
12. Other. Includes any category of contracting and procurement which is not identified elsewhere, e.g., purchase of bus/van service, vehicle maintenance, etc.
13. Self-explanatory.
14. Self-explanatory.
15. Certified By. Signature of recipient's financial officer or other authorized official.





U.S. Department of
Transportation

Report of DBE Awards and Commitments

1. Administration: _____ 2. Fiscal Year: _____ 3. Report Period: _____

4. Name of Recipient: _____

5. Address: _____

6. City/State/Zip: _____

7. Annual DBE Goal: _____%

8. Total prime contracts/procurements awarded this report period to all contractors:
(a) Number _____ (b) \$ Value _____

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
9. DBE prime contracts/procurements awarded this report period				
10. DBE subcontracts/procurements awarded this report period				
11. Subcontracting/procurement commitments to DBEs this report period				

12. Total prime contracts/procurements awarded to date to all contractors:
(a) Number _____ (b) \$ Value _____

13. Total awards to date to DBEs: (a) Number _____ (b) \$ Value _____ (c) _____%

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
14. DBE prime and subcontracts/procurements awards by ethnic group:				
Bleek American.....				
Hispanic American.....				
Native American.....				
Asian-Indian American.....				
Asian-Pacific American.....				
Other.....				
TOTAL.....				

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
15. Number and \$ value of DBE prime and subcontract awards by type of work:				
(a) Professional/Consultent Services...				
(1) _____				
(2) _____				
(3) _____				
(b) Construction.....				
(1) _____				
(2) _____				
(3) _____				
(c) Supplies.....				
(1) _____				
(2) _____				
(3) _____				
(d) Equipment.....				
(1) _____				
(2) _____				
(3) _____				
(e) Other.....				
(1) _____				
(2) _____				
(3) _____				
TOTAL.....				

16. Name of Preparer: _____ 17. Telephone No. () _____

DOT 4630
REPORT OF DBE AWARDS AND COMMITMENTS
INSTRUCTIONS

1. The DOT Operating Administration providing Federal financial assistance. (Example: FHWA, UMTA, FRA, FAA).
2. Federal fiscal year, beginning October 1 and ending September 30. (For FAA recipients indicate the time period covered by the goals, if applicable).
3. The period of the Federal fiscal year for which the report is being submitted. If report is submitted on a quarterly basis enter the number 1, 2, 3, or 4 -- October 1 through December 31 (10/1 - 12/31) would be the first quarter. If other than a quarterly report specify the time period using the beginning and ending month and day. (Recipients of an FAA grant of \$1 million or more which will result in DOT-assisted contracts should submit the report each report period until all contracts and subcontracts under that portion of the grant are executed. All other FAA recipients should submit the report annually following the end of the fiscal year. Sponsors of more than one airport should submit a separate report for each facility).
4. Name of the recipient or subrecipient. (In the case of the Federal-aid highway program, this would be the State highway agency.)
5. Street address or post office box number of recipient or subrecipient. (May be omitted by State highway agencies.)
6. City, State and ZIP Code for recipient or subrecipient. (May be omitted by State highway agencies.)
7. The recipient's annual DBE goal for the fiscal year indicated in Item 2 as approved by the DOT Operating Administration indicated in Item 1.
- 8(a). The total number of DOT-assisted prime contracts/procurements awarded during the reporting period. These totals shall include all types of contracts/procurements for which DOT funds are used, including professional/consultant services, construction, purchase of material or supplies, lease or purchase of equipment, and any other types of services. (For FHWA recipients this includes advance construction projects.)
- 8(b). For FHWA and FAA recipients, the dollar value of the total Federal share of all prime contracts and procurements reported in Item 8(a). For UMTA recipients the total dollar value of UMTA-assisted funds. Recipients of other DOT Operating Administrations may include recipient matching funds. This and all other dollar entries are to be rounded to the nearest dollar. (For FHWA recipients the Federal share of advance construction projects should be the amount of Federal-aid funds which would eventually be obligated when the project is converted.)

9. For FHWA, UMTA and FAA recipients, the number and dollar value of the Federal share of the prime contracts/procurements reported in Item 8 which were awarded to DBEs. Recipients of other DOT Operating Administrations may include recipient matching funds in the reported DBE Awards. The total awards to DBEs should be included in Columns b and d. The portion of total DBE awards that were made with women-owned firms should be included in Columns a and c.

10. For FHWA, UMTA and FAA recipients, the number and dollar value of the Federal share of the DBE subcontracts/procurements actually executed by (non DBE) prime contractors on all active DOT-assisted prime contracts/procurements during the reporting period. Recipients of other DOT Operating Administrations may include recipient matching funds in the reported DBE subcontract awards. Include all qualifying subcontracts executed during the period regardless of when the prime contract was executed. This includes transactions for professional/consultant services, construction, purchase of materials, lease of equipment, etc., which were made with a DBE during the reporting period. The total awards to DBEs should be included in Columns b and d. The portion of total DBE awards that were made with women-owned firms should be included in Columns a and c.

11. For FHWA recipients, the number and dollar value of the Federal share of subcontracting commitments to DBEs made by successful (non DBE) bidders at the time of prime contract/procurement award for all prime contracts/procurements reported in Item 8. The total commitments to DBEs should be included in Columns b and d. The portion of total DBE commitments that were made with women-owned firms should be included in Columns a and c. Commitments are written indications to the recipients that the (non DBE) successful bidder intends to use specific DBEs as subcontractors, material suppliers, etc. (NOTE: THIS ITEM DOES NOT APPLY TO UMTA, FAA and FRA RECIPIENTS).

12(a). The total number of DOT-assisted prime contracts/procurements awarded to date. This is the sum of all prior and current awards as reported in Item 8(a).

12(b). For FHWA, UMTA and FAA recipients, the dollar value of the total Federal share of all prior and current prime contracts and procurements reported in Item 8(b). Recipients of other DOT Operating Administrations may include recipient matching funds. This and all other dollar entries are to be rounded to the nearest dollar. (For FHWA recipients, the Federal share of advance construction projects should be the amount of Federal-aid funds which would eventually be obligated when the project is converted.)

13(a). For UMTA and FAA recipients, the number of executed DBE prime contracts/procurements reported to date in Item 9(b) and the executed DBE subcontracts/procurements reported to date in Item 10(b). For FHWA recipients, use the sum of Item 9(b) and Item 11(b) subcontracting/procurement commitments to DBEs as reported to date.

13(b). For UMTA and FAA recipients, the dollar value of the total Federal share of the DBE prime contracts/procurements and DBE subcontracts/ procurements reported to date in Item 9(d) and Item 10(d). FHWA recipients should include the dollar value of the total Federal share reported to date in Item 9(d) and Item 11(d). Recipients of other DOT Operating Administrations may include recipient matching funds. This and all other dollar entries are to be rounded to the nearest dollar. (For FHWA recipients the Federal share of advance construction projects should be the amount of Federal-aid funds which would eventually be obligated when the project is converted.)

13(c). The percent of DBE awards to date, i.e. Item 13(b) divided by Item 12(b) and the results multiplied by one hundred.

14. This is breakdown by ethnic group of the number and dollar value of all DBE prime contracts/procurements reported in Item 9 plus all executed DBE subcontracts/procurements reported in Item 10. The total awards to DBEs should be included in Columns b and d. The portion of total DBE awards that were made with women-owned firms should be included in Columns a and c. For FHWA, UMTA and FAA recipients, the dollar value of the Federal share is reported. For recipients of other DOT Operating Administrations, recipient matching funds may be included.

The ethnic group definitions for the MBE program are contained in 49 CFR 23.5, dated March 31, 1980, and for the DBE program, in 49 CFR 23.62, dated July 21, 1983 and revision dated October 21, 1987. The ethnic group labeled "Other" includes DBEs owned and operated by individuals who have been determined by recipients on a case-by-case basis to be socially and economically disadvantaged. In the case of split ownership by two or more minorities/disadvantaged individuals, the DBE participation should be reported for the ethnic group which owns the largest share. If the ownership is equal, the DBE participation should be reported for the ethnic group involved which is listed first.

15. The number and dollar value of awards by type of work performed by DBEs for the prime contracts/procurements reported in Item 9 and the executed subcontracts/procurements reported in Item 10. Prime and subcontracts/ procurements which involve more than one type of work should be reported only for the predominant work type based on cost.

NOTE: Examples of the types of work are listed below:

a. Professional/Consultant Services:

- Engineering - professional services such as design or construction inspections performed by an engineering firm.
- Architectural - professional services performed by an architectural firm.
- Accounting.
- Right-of-Way - Right-of-way services such as fee appraisals and negotiations.
- Supervision and management of transit system operations.
- Other - Other professional services such as supportive services and research contracts.

b. Construction:

- Grading and Drainage - grading, drainage, clearing and related construction items.
- Paving - construction of base course, pavement and related items.
- Structures/Buildings - bridge construction operations, including piling, substructure, superstructure, etc., and building construction including plumbing, heating, electrical work, etc.
- Materials - manufacture and/or supply of materials which are incorporated in a construction project.
- Equipment - rental of equipment for use on a specific construction
- Trucking - agreements for the hauling of earthwork or other materials for a construction project.
- Traffic Control - permanent traffic control items such as signs, signals or markings, and temporary traffic control items such as barricades and flagging.
- Landscaping - landscaping, seeding, sodding, erosion control and related items.
- Other - other construction activities such as lighting contracts and guard rail.

c. Supplies:

- Fuel.
- Tires.
- Other.

d. Equipment:

- Leasing.
- Purchase.
- Other.

e. Other:

- Building leases.
- Printing.
- Etc.

16. Typed name of person who prepared the report.

17. Telephone number of person who prepared the report.



ATTACHMENT 5

SAMPLE FORMAT

TRANSIT VEHICLE MANUFACTURERS CERTIFICATION OF
COMPLIANCE WITH SUBPART D, 49 CFR PART 23

This procurement is subject to the provisions of Section 23.67 of 49 CFR Part 23. Accordingly, as a condition of permission to bid, the following certification must be completed and submitted with the bid. A bid which does not include the certification will not be considered.

TRANSIT VEHICLE MANUFACTURER CERTIFICATION

(Name of Firm), a TVM, hereby certifies that it has complied with the requirements of Section 23.67 of 49 CFR Part 23 by submitting a current annual DBE goal to UMTA. The goals apply to Federal Fiscal Year ____ (October 1, 19__ to September 30, 19__) and have been approved or not disapproved by UMTA.

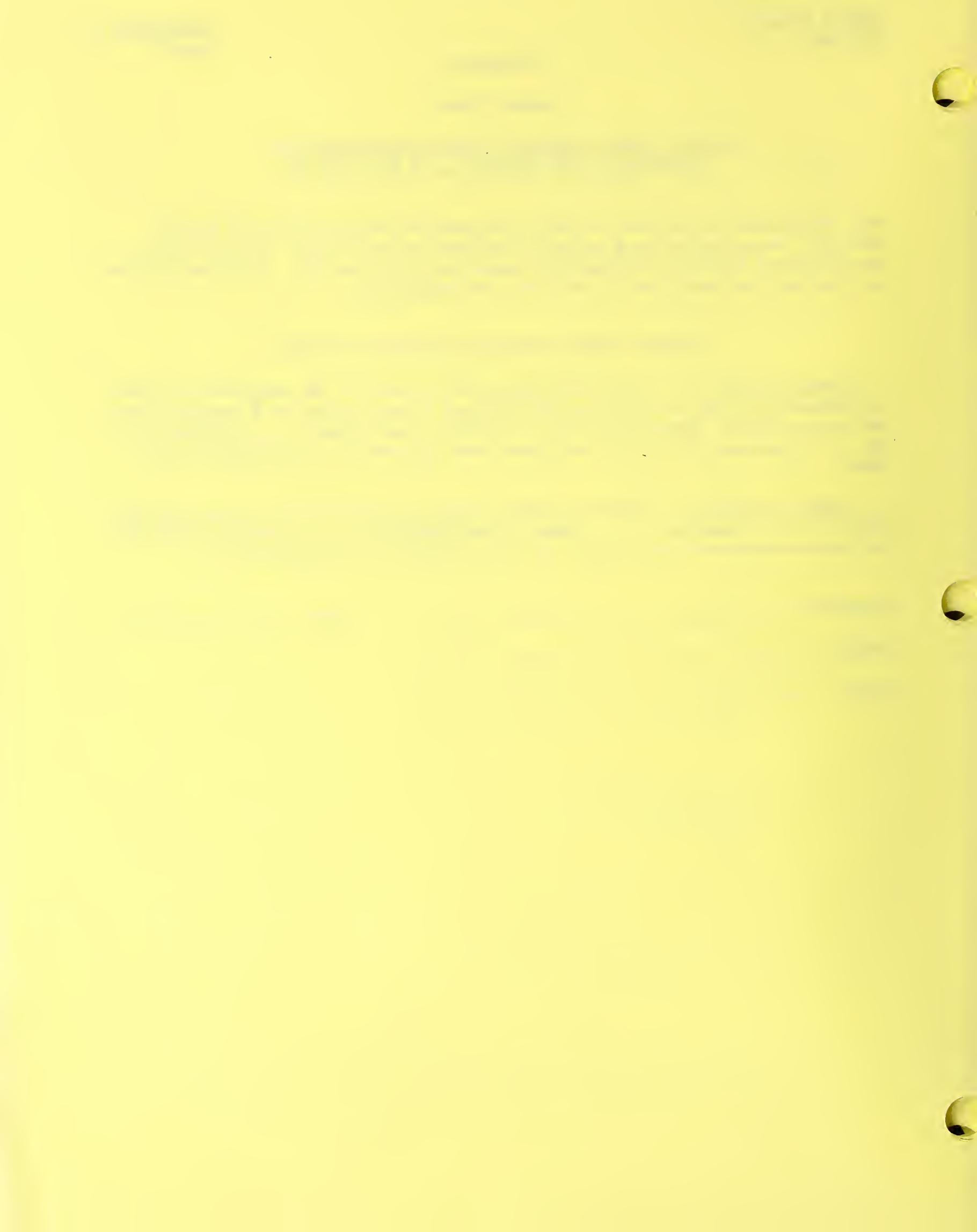
(Name of Firm), hereby certifies that the manufacturer of the transit vehicle to be supplied (Name of Manufacturer) has complied with the above-referenced requirement of Section 23.67 of 49 CFR Part 23.

Signature: _____

Date: _____

Title: _____

Firm: _____



ATTACHMENT 6

SAMPLE METHODOLOGY

TRANSIT VEHICLE MANUFACTURER (TVM)

Fiscal Year _____

Name of Firm: _____

Total Projected UMTA-Assisted Contracting Opportunities \$ _____
(Exclude work performed in other countries and TVM's own work force.)

<u>Contracting Category</u>	<u>Total \$ Value</u>	<u>Projected Level of DBE Participation \$ Value</u>
Chassis		
Steel & Aluminum		
Flat Glass		
Rubber Products		
Fasteners		
Hardware		
Electrical Components		
Sealers & Adhesives		
Seating		
Wood Products		
Transportation		
Janitorial Services		
Other (Specify):		
TOTAL	_____	_____

The overall percentage DBE participation is derived by dividing the dollar value of DBE participation by the total dollar value of contracting opportunity. Your firm's percentage DBE participation is ____ percent. A DBE goal of less than 10 percent must be accompanied by justification as set out in 49 CFR Section 23.65.

See Reverse Side

Availability of DBEs in each Contracting Category:

	<u>Name of Firm</u>	<u>DBE</u>	<u>Area Code and Telephone No.</u>
Chassis			
Steel & Aluminum			
Flat Glass			
Rubber Products			
Fasteners			
Hardware			
Electrical Components			
Sealers & Adhesives			
Seating			
Wood Products			
Transportation			
Janitorial Services			
Other (Specify):			

Name of DBE Firms Anticipated to be used:

<u>Name/Address of Firm</u>	<u>Contracting Category</u>	<u>\$ Value</u>
-----------------------------	-----------------------------	-----------------

Please review the accuracy of this methodology before forwarding. This methodology should be modified to fit your particular procurements.



U.S. Department of Transportation

Urban Mass Transportation Administration

SAMPLE FORMAT

TRANSIT VEHICLE MANUFACTURER'S DBE REPORT

1. Fiscal Year: _____ 2. Report Period: _____
3. Name of Transit Vehicle Manufacturer: _____
4. Address: _____
5. City/State/Zip: _____
6. Annual DBE Goal: _____%
7. Total prime contracts and subcontracts/procurements involving UMTA funds awarded this report period to all contractors: (a) Number _____ (b) \$ Value _____

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
8. DBE prime contracts and subcontracts/procurements awarded this report period				

9. Total prime contracts and subcontracts/procurements involving UMTA funds awarded to date (current fiscal year) to all contractors: (a) Number _____ (b) \$ Value _____

10. Total awards to date to DBEs involving UMTA funds: (a) Number _____ (b) \$ Value _____ (c) _____%

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
11. DBE prime and subcontracts/procurements awards by ethnic group:				
Black American.....				
Hispanic American.....				
Native American.....				
Asian-Indian American.....				
Asian-Pacific American.....				
Other.....				
TOTAL.....				

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
12. Number and \$ value of DBE prime and subcontract awards by type of work:	////	////	////	////
(a) Professional Services.....				
(1) _____				
(2) _____				
(3) _____				
(b) Materials.....				
(1) _____				
(2) _____				
(3) _____				
(c) Parts/Equipment/Supplies.....				
(1) _____				
(2) _____				
(3) _____				
(d) Other.....				
(1) _____				
(2) _____				
(3) _____				
TOTAL.....				

13. Name of Preparer: _____ 14. Telephone No. () _____

TRANSIT VEHICLE MANUFACTURER'S DBE REPORT

INSTRUCTIONS

1. Federal fiscal year, beginning October 1 and ending September 30.
2. The period of the Federal fiscal year for which the report is being submitted. Enter the number 1, 2, 3, or 4 -- October 1 through December 31 (10/1 - 12/31) would be the first quarter; January 1 through March 31 (1/1 - 3/31) would be the second quarter; April 1 through June 30 (4/1 - 6/30) would be the third quarter; July 1 through September 30 (7/1 - 9/30) would be the fourth quarter.
3. Name of company/corporation.
4. Street address or post office box number of company/corporation.
5. City, State, and Zip for company/corporation.
6. The annual DBE goal for the fiscal year indicated in Item 1 as accepted by UMTA.
- 7(a). The total number of UMTA-assisted prime contracts and subcontracts/ procurements awarded during the reporting period. These totals shall include all types of contracts/procurements for which UMTA funds are used, including professional/consultant services, purchase of parts or supplies, lease or purchase of equipment, and any other types of services.
- 7(b). The total dollar value of UMTA-assisted funds.

The number and dollar value of the Federal share of the prime contracts and subcontracts/procurements reported in Item 7 which were awarded to DBEs. The total awards to DBEs should be included in Columns b and d. The portion of total DBE awards that were made with women-owned firms should be included in Columns a and c.
- 8(a). The total number of UMTA-assisted prime contracts and subcontracts/ procurements awarded to date. This is the sum of all prior and current awards as reported in Item 7(a).
- 8(b). The dollar value of the total Federal share of all prior and current prime contracts and procurements reported in Item 7(b). This and all other dollar entries are to be rounded to the nearest dollar.
- 10(a). The number of executed DBE prime contracts and subcontracts/ procurements reported to date in Item 8(b).

- 10(b). The dollar value of the total Federal share of the DBE prime contracts/ procurements and DBE subcontracts/procurements reported to date in Item 8(d). This and all other dollar entries are to be rounded to the nearest dollar.
- 10(c). The percent of DBE awards to date, i.e., Item 10(b) divided by Item 9(b) and the results multiplied by one hundred.
11. This is a breakdown by ethnic group of the number and dollar value of all DBE prime contracts/procurements reported in Item 8. The total awards to DBEs should be included in Columns b and d. The portion of total DBE awards that were made with women-owned firms should be included in Columns a and c. The dollar value of the Federal share is to be reported.
- The ethnic group definitions for the DBE program are contained in 49 CFR Section 23.62, dated July 21, 1983 and revision dated October 21, 1987. The ethnic group labeled "Other" includes DBEs owned and operated by individuals who have been determined on a case-by-case basis to be socially and economically disadvantaged. In the case of split ownership by two or more disadvantaged individuals, the DBE participation should be reported for the ethnic group which owns the largest share. If the ownership is equal, the DBE participation should be reported for the ethnic group involved which is listed first.
12. The number and dollar value of awards by type of work performed by DBEs for the prime contracts and subcontracts/procurements reported in Item 8. Prime and subcontracts/procurements which involve more than one type of work should be reported only for the predominant work type based on cost.

NOTE: Examples of the types of work are listed below:

- a. Professional Services:
-- Accounting
-- Advertising
-- Legal
-- Marketing
- b. Materials:
-- Aluminum and Steel
-- Glass
-- Plastics
-- Rubber
-- Wood

- c. Parts/Equipment/Supplies:
 - Air Conditioning/Heating Units
 - Batteries
 - Braking Systems
 - Chassis
 - Communication Systems
 - Electrical Components
 - Engines
 - Fare Boxes
 - Fasteners (e.g., Nuts and Bolts)
 - Headlamps
 - Radiators
 - Sealers and Adhesives
 - Seats
 - Tires

- d. Other:
 - Janitorial
 - Printing
 - Transportation of Vehicles

13. Type name of person who prepared the report.

14. Telephone number of person who prepared the report.

TO BE FILLED OUT BY APPLICANT:

Application Title:

Institution:

TO BE FILLED OUT BY APPLICANT:

Application Title:

Institution:

TO BE FILLED OUT BY UMTA:

Date Received: _____ Application Number: _____

TO BE FILLED OUT BY UMTA:

Date Received: _____ Application Number: _____

TO BE FILLED OUT BY APPLICANT:

Application Title:

Institution:

TO BE FILLED OUT BY APPLICANT:

Application Title:

Institution:

TO BE FILLED OUT BY UMTA:

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